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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No._____

ALASKA STEAMSHIP COMPANY, a corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent.*

PETITION

FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

LAWRENCE BOGLE,
CASSIUS E. GATES,
NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
Proctors for Petitioner.

Office and Post Office Address,
609-24 Central Building, Seattle, Washington.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the HONORABLE CHARLES E. HUGHES,
Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

PRAYER

The Petitioner, Alaska Steamship Company, a corporation, prays that a Writ of Certiorari issue to review the decree entered on February 13, 1933, by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause (R. 79).

DECREE BELOW

Such decree of the United States Circuit Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court for the Western District of Washington, Northern Division, dismissing the action of the petitioner brought to recover compensation for transporting shipwrecked American seamen from Ketchikan, Alaska, to the port of Seattle.

QUESTION PRESENTED

Whether the acts for the relief and protection of shipwrecked American seamen in foreign ports, Alaska and other territories, authorize the shipment of shipwrecked seamen from the Territory of Alaska to ports of the United States at the expense of the government in

accordance with and in pursuance of the terms of a Shipwrecked Seamen's Certificate (R. 32-37) issued by United States Department of Commerce, Bureau of Navigation, through its customs officials in Alaskan ports.

SUMMARY OF FACTS

On November 15, 1929, the SS. DEPERE, belonging to the petitioner steamship company was wrecked near Cape Decision, Southwestern Alaska (R. 30). The ship's crew went ashore in lifeboats, were picked up the next day by a United States Coast Guard cutter, taken to Ketchikan, Alaska, and delivered to the United States Deputy Collector of Customs, in Ketchikan, who took charge of the crew as destitute seamen and provided them with lodging and sustenance (R. 31).

The SS. YUKON, another vessel of the appellant's line, stopped at the port of Ketchikan en route for Seattle on her regular course. The Deputy Collector of Customs issued to her master, Captain Glasscock, a Shipwrecked Seamen's Certificate, furnished by the Department of Commerce, Bureau of Navigation, to customs officers in Alaska for execution and delivery to masters of vessels transporting shipwrecked seamen from Alaska to the United States (R. 31-37).

Captain Glasscock transported the shipwrecked seamen on board the SS. YUKON to the port of Seattle where the United States Collector of Customs, in accordance with the rules and regulations of the Department of Commerce (R. 40) and the established practice of his office

(R. 39-41), certified on the bottom of said certificate that the crew had been delivered in Seattle.

Demand for payment of the compensation specified in said certificate was regularly made upon the Comptroller General of the United States, who refused payment on the sole ground that:

> "The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator, and where this duty has been undertaken the appropriation for the relief and protection of American seamen is not available to reimburse the owner or operator for the expenses incurred in performing such duty." (R. 37-8).

RULINGS OF LOWER COURT

This action was brought to recover the compensation which the Comptroller had refused to pay on the foregoing ground. The defendant demurred to the complaint. Judge Neterer, district court judge of the Western District of Washington, Northern Division, overruled the demurrer (*Alaska SS. v. U. S.*, 1930 A. M. C. 1907).

The respondent then answered (R. 14-16) and the case was tried. The petitioner proved the facts alleged in the complaint, and all of them (R. 29-41). The respondent offered no proof whatever (R. 41) but rested his defense upon the legal construction of the statutes in question and moved to dismiss.

The district court, Judge Neterer, rendered its decision herein (R. 51-54) as its Findings of Fact and Conclusions of Law (R. 54), this decision being squarely opposed to the decision on demurrer in holding that the

petitioner could not recover compensation for transporting to Seattle the crew of one of its own vessels. A judgment of dismissal was accordingly entered (R. 55) from which an appeal was prosecuted to the circuit court of appeals.

RULING OF THE CIRCUIT COURT OF APPEALS

The circuit court of appeals held that the obligation does not rest on a shipowner to transport a shipwrecked crew of one of its own vessels to a port in the United States, but the circuit court affirmed the judgment of dismissal entered by the district court solely upon the ground that the Acts for Relief and Protection of Shipwrecked American Seamen in Alaska do not authorize the issuance of shipwrecked seamen's certificates in Alaska, but refer solely to foreign ports where consular officers are authorized to issue the same (R. 69). This is not the grounds upon which the Comptroller General refused to pay the petitioner's claim, nor the ground upon which the action was defended, the point having been raised for the first time in respondent's answering brief on appeal to the circuit court (R. 53).

REASONS FOR GRANTING WRIT

I. The decision of the circuit court of appeals for the ninth circuit throws into confusion the administration of the relief and protection which has been afforded to shipwrecked seamen in Alaska, the Hawaiian Islands, Porto Rico, the Philippine and Virgin Islands, and nullified the acts annually passed for many years (Post P. 10) specifically appropriating funds for the relief of ship-

wrecked seamen in said territories insofar as said acts contemplate transportation of such seamen back to the United States. The construction given by the circuit court to Sections 593, 678, 679 of Title 46 U. S. C., and to the appropriation acts referred to, relieves American ships from all obligation to transport shipwrecked American seamen stranded in territorial ports to ports of the United States, and results in inequality of treatment towards seamen shipwrecked in foreign ports and those wrecked in ports of non-continguous territories of the United States, contrary to the intent of Congress.

II. The decisions of the district court and the circuit court in this case are the only known decisions written by courts of this country squarely involving the obligations of the shipowner and the government respectively, towards shipwrecked seamen in a foreign or territorial port. This issue has been in confusion for many years. Shipwrecked seamen's certificates have been regularly issued by consular officers in foreign ports and customs collectors in Alaska to vessels transporting shipwrecked seamen to the United States, without regard to the ownership of the transporting vessel. The Comptroller General of the United States, on the other hand, has refused to pay the compensation authorized by these certificates whenever it was discovered that the vessel transporting the seamen belonged to the same owner as did the wrecked vessel (R. 37-38, Decisions of Comp. Gen., Vol. 3, p. 148, Vol. 4, p. 252, 542, Vol. 5, p. 623, Vol. 6, p. 723). Neither the Comptroller General nor any administrative department of the government has ever questioned the applicability of the statutes in

question to Alaska, but the decision of the circuit court construing the statutes overturns the established administrative practice and construction of these statutes for a period of over thirty-three years. An important question of Federal Law has thus been determined which should be reviewed by this court.

UNITED STATES OF AMERICA,
STATE OF WASHINGTON,
COUNTY OF KING, } ss.

CASSIUS E. GATES, being first duly sworn on oath deposes and says:

That he is an attorney at law, admitted to practice before the Supreme Court of the United States; that he is one of the Proctors for the Petitioner in the above entitled cause; that he prepared the foregoing Petition in good faith and not for delay; that this Petition in his opinion is meritorious and well founded in law; that he has read said petition, knows the contents thereof, and believes the same to be true.

CASSIUS E. GATES.

Subscribed and sworn to before me this 4th day of May, 1933.

CLAUDE E. WAKEFIELD,
Notary Public in and for the State of Washington, residing at Seattle.

LAWRENCE BOGLE,
NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
of Counsel,
Proctors for Petitioner.
Central Building,
Seattle, Washington.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1932

No. _____

ALASKA STEAMSHIP COMPANY, a corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent.*

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The only opinions rendered on the point at issue are in this case. The first decision by District Judge Neterer overruling the respondent's demurrer (1930 A. M. C. 1907, Oct. 16, 1930) sustained the right of the petitioner to bring an action to recover compensation for transporting shipwrecked seamen from Alaska to a port of the United States in pursuance of the Shipwrecked Seamen's Certificate issued by the Customs officials in Alaska. When the case was tried on its merits, although all of the facts of the complaint were proved and the

respondent offered no evidence whatever, the district judge in effect reversed his former conclusion and held that the petitioner could not recover (R. 51-54, 60 Fed. 2d 135, March 21, 1932). The primary question considered in both decisions was whether or not the shipowner could recover for returning to an American port the shipwrecked crew of one of its own vessels, the application of the laws for the relief and protection of shipwrecked seamen to Alaska not having been challenged (R. 53).

The opinion of the circuit court of appeals, Judges Wilbur and Sawtelle, was written by Judge Sawtelle, filed February 13, 1933 (R. 69), and reported in 63 Fed. 2d 398.

JURISDICTION

The jurisdiction of this court is invoked under Judicial Code, section 240 (a) as amended by act of February 13, 1925, Ch. 229 (43 Stat. 938; 28 U. S. C. A., section 347).

The decree of the circuit court of appeals to be reviewed was entered February 13, 1933 (R. 79).

Petition for writ of certiorari was filed May , 1933.

No petition for rehearing has been filed relative to such final decree.

FACTS

The facts are sufficiently reviewed in the petition, there being no dispute in respect to them, questions of law only having been involved in the case. The decision of the circuit court of appeals leaves but one question to be determined by this court.

QUESTION PRESENTED

Whether the acts for the relief and protection of shipwrecked American seamen in foreign ports and Alaska authorize the shipment of shipwrecked seamen from the Territory of Alaska to ports of the United States at the expense of the government in accordance with and in pursuance of the terms of a Shipwrecked Seamen's Certificate issued by the United States Department of Commerce, Bureau of Navigation, through its Customs officials in Alaskan ports.

ARGUMENT

I. Acts for the Relief and Protection of American Seamen in Foreign Ports and in Alaska

We think the error of the Circuit Court's decision will be apparent upon considering the history of the acts for the Relief and Protection of Shipwrecked American Seamen in Foreign Ports and Alaska. Alaska, acquired in March, 1867, was not specifically mentioned until 1896, the act in question previous to 1896 reading as follows:

RELIEF AND PROTECTION OF AMERICAN SEAMEN

> "Relief and protection of American seamen in foreign countries, or so much thereof as may be necessary, $50,000."
>
> Vol. 27 Stat., pages 233, 506.
>
> Vol. 28 Stat., pages 150, 824.

Apparently the traffic between Alaska and the United States increased to such proportions that destitute seamen became a problem, for in 1896 the above entitled act read as follows:

"Relief and protection of American seamen in foreign countries *and also on the coast of Alaska* or so much thereof as may be necessary, $50,000."

The foregoing act was amended in the same year by act of May 28, 1896 (Vol. 29 Stat., page 186), to read as follows:

"Relief and protection of American seamen in foreign countries *and shipwrecked American seamen in the Territory of Alaska*, $50,000 or so much thereof as may be necessary."

The foregoing act was reenacted in the same wording in 1897 (Vol. 29 Stat., page 589, Ch. 268), 1898 (Vol. 30 Stat., page 272, Ch. 55), 1899 (Vol. 30 Stat., page 833, Ch. 128). It will be observed that in each instance recited above the appropriation appears in "An Act Making Appropriations for the Diplomatic and Consular Service for the Fiscal Year Ending June 30, ——," notwithstanding the fact that there were no consular officers in Alaska. Insofar as destitute seamen were concerned, the ports of Alaska were treated as foreign ports in which the seamen were entitled to relief, and the same is true of every appropriation act hereinafter referred to.

In 1900, the act was changed to read as follows, and the same act was reenacted in 1901 and each year successively until 1907:

"Relief and protection of American seamen in foreign countries and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Cuba, Puerto Rico, and the Philippine Islands, or so much thereof as may be necessary, $30,000.". (Vol. 31 Stat., page 70, Ch. 159).

Vol. 31 Stat., page 898.

Vol. 32 Stat., page 87, page 819.

Vol. 33 Stat., page 79, page 927.

Vol. 34 Stat., page 295, page 925.

The 1908 act was amended to add the words "the Panama Canal Zone" after the words "Porto Rico," and thereafter the act was passed each year down to and inclusive of 1915, except that the appropriation was lowered from $30,000 to $20,000 in 1912, 1913, 1914 and 1915.

Vol. 35 Stat., page 181, page 682.

Vol. 36 Stat., page 346.

Vol. 37 Stat., page 104, page 696.

Vol. 38 Stat., page 452, page 1125.

In 1916, the act was changed to read as follows, and thereafter the same act was passed each year down to and inclusive of 1921, except that the appropriations were increased as indicated below:

> "Relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, and the Philippine Islands, $40,000." (Vol. 39 Stat., page 262).

Vol. 39 Stat., page 1058, $40,000.

Vol. 40 Stat., page 529, $80,000.

Vol. 40 Stat., page 1335, $100,000.

Vol. 41 Stat., page 223, $100,000.

Vol. 41 Stat., page 1216, $150,000.

From the beginning of the present century, as was established at trial and is admitted by the undisputed facts of this case (R. 44, par. VI; R. 39-41), shipwrecked American seamen in the Territory of Alaska have been regularly transported to a port in the United States

upon the orders of a Customs official and upon the issuance of a Shipwrecked Seamens' Certificate issued by the Department of Commerce, Bureau of Navigation, such as that in evidence in this case (R. 32-37). Compensation had been regularly paid by the United States Government upon presentation at the Treasury of such certificate. These certificates were issued in pursuance of Revised Statutes, Sec. 4577, 4578, and 4579 (now Sections 678, 679 and 681 of Title 46 U. S. C.). It will be noted that Revised Statutes 4578 (Section 679 of Title 46 U. S. C. A., Act of February 28, 1803, Ch. 9, Section 4, 2 Stat. 204, as amended by Act of June 26, 1884, Ch. 121, Section 9, and Act of June 19, 1886, Ch. 421, Section 18), provided that all masters of vessels of the United States were required to take destitute seamen back to the United States upon such terms as were agreed upon with consular officers, and provided a limitation of $10.00 for each person where voyages did not exceed thirty days and $20.00 where voyages did exceed thirty days "when the transportation is by sailing vessel." In 1922, a more specific regulation of the compensation was adopted as an amendment to the appropriation act, the history of which is traced above, the act of 1922 reading:

> "For relief and protection of American seamen in foreign countries and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $220,000, provided that no permanent appropriation shall be available for payment for the transportation on steam vessels of any seamen in excess of the amount agreed upon between the Consular officers

and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessels and not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate." (Vol. 42, page 603, Ch. 204).

The intention that this proviso should apply to the transportation of shipwrecked seamen in Alaska is unmistakable, and yet the same oversight as existed in the acts cited above is still present, namely, the reference to "consular officers" notwithstanding the fact that in none of the places named are consular officers to be found. The same error appears in the act of 1923, where the proviso is repeated with slight changes:

"For relief and protection of American seamen in foreign countries and in the Panama Canal Zone and shipwrecked seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $200,000, provided that hereafter the amount agreed upon between the Consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law shall in each case constitute the lawful rate for the transportation on steam vessels." (Vol. 42 Stat., page 1072, Ch. 21).

The proviso does not again appear in the subsequent appropriation acts, the languages of which except for the omission of the proviso, is the same as that last quoted above:

1924, Vol. 43 Stat., page 208, Ch. 204.

1925, Vol. 43 Stat., page 1017, Ch. 364.

1926, Vol. 44 Stat., page 334, Ch. 195.
1927, Vol. 44 Stat., page 1183, Ch. 189.
1928, Vol. 45 Stat., page 68, Ch. 57.
1929, Vol. 45 Stat., page 1099, Ch. 102.
1930, Vol. 46 Stat., page 177, Ch. 184.
1931, Vol. 46 Stat., page 1312, Ch. 280.
1932, 72nd Congree, No. 232, Public Laws.
1933, 72nd Congress, No. 387, Public Laws.

The circuit court of appeals pointed out that this proviso was dropped from the act after 1923, but failed to note that the proviso had thereafter been assigned to its proper place in the shipping laws of the United States, where it now appears as Section 680, Title 46, Ch. 18 (relating to merchant seamen).

Throughout the foregoing history of the appropriations for the relief and protection of American seamen since 1896, the total sum of $2,415,000 has been appropriated for the relief of seamen in foreign countries and in the territories and islands specified, of which substantial portions must have been spent for returning shipwrecked seamen from Alaska in accordance with the practice established in the trial of this case, but through the entire period "Consular officers" at foreign ports only are referred to. Note, too, that since the act of June 7, 1872, Vol. 17 Stat., Ch. 322, Sec. 33, seamen's contracts have been terminated at the wreck of their vessel, and since the act of December 21, 1898 (Vol. 30 Stat., 755, Ch. 28, Sec. 3), amending the act of 1872, such seamen have been considered as destitute seamen to be transported to the United States at the expense of the govern-

ment, these provisions being now embodied in Sec. 593, Title 46 U. S. C.:

> "*Termination of Wages by Loss of Vessel; Transportation to Place of Shipment.* In cases where the service of any seamen terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681."

No exception was made in the case of Alaska. The section applied to all shipwrecked seamen.

In further support of the Departmental construction of the acts above referred to, note the express provision of Congress *for foreign ports where there are no Consular officers*, found in Sec. 681 (repealed in 1930 and incorporated in amended Section 679, Title 46 U. S. C. A. supplement), in which it was specifically provided that in addition to the allowance fixed by law "reasonable compensation" shall be paid for transporting destitute seamen:

> " * * * as shall be deemed equitable by the Comptroller General of the United States."

No point was made below or by the Comptroller that the compensation fixed in the shipwrecked seaman's certificate was in any way objectionable. The only question remaining under this section was whether or not Alaskan ports were "foreign ports" within the meaning of the act. For the purpose of relieving shipwrecked and destitute American seamen, ports of this non-contiguous territory of the United States have consistently been

treated as foreign ports, both by Congress and by the Department charged with the responsibility of caring for such seamen.

II. Construction of Statutes by Department Charged With Their Administration

There is no doubt that the Bureau of Navigation, Department of Commerce, has general superintendence of the commercial, marine and merchant seamen of the United States.

Sec. 1 and 2, Title 46 U. S. C.

The established practice of this Department in administering relief to destitute seamen for a period of over thirty-three years, should be all but conclusive of the correct meaning of the statutes construed. To conclude at this time that the Department had no authority to afford "relief" to shipwrecked seamen by transporting them to a United States port would not only overturn this establishment practice but would leave the burden of maintaining destitute seamen in territorial ports upon the government for indefinite periods of time and deny to the government the right to relieve itself of this burden by transshipping the seamen to United States ports. Such an unreasonable construction should not be sustained.

If there was any doubt as to the power of the Department of Commerce, Bureau of Navigation, to place the above construction on the act in question, surely this was dispelled by the repeated appropriations of Congress for a period of over thirty-three years, during which time there were amendments to the acts relating to

merchant seamen without in any way modifying or disapproving of this practice of the Department. This legislative action should be regarded as an acceptance and approval of the Departmental construction binding upon the courts.

New York, N. H. etc. Co. v. Interstate Commerce Commission, 200 U. S. 361;

U. S. v. Falk, 204 U. S. 143;

U. S. v. Gerecedo Hermanos, etc. Co., 209 U. S. 337;

U. S. v. Missouri R R. Co., 278 U. S. 269.

The construction or interpretation of a statute by a Department charged with its administration will not be disturbed by the court without very cogent reasons.

Robertson v. Downing (1887), 127 U. S. 607;

U. S. v. Philbrick, 120 U. S. 52, 59;

Brown v. U. S., 113 U. S. 568, 571;

U. S. v. Falk, 204 U. S. 143, 151;

Bardwell v. Petty (1922), 286 Fed. 772, 774;

Wisconsin v. Illinois (1928), 278 U. S. 400, 73 L. Ed. 426.

An exhaustive analysis of the effect of Departmental construction of statutes upon subsequent judicial construction is found in a note at 278 U. S. 269, 73 L. Ed. 222. This case satisfies all the requirements of the general rule making the Departmental construction binding upon the courts, as follows:

1. That statutes construed are ambiguous.

2. The construction by the Department has been uniform and continuous, as proved in this case since 1900, and probably since 1896 when Alaska was first made a subject of relief in respect to destitute seamen.

3. The construction has been general in that it was acted upon, as proved in this case, (a) by Customs officials in Alaska, (b) by Deputy Collectors of Customs in Seattle, (c) by the Bureau of Navigation in Washington, (d) by the Treasury Department in paying the compensation upon presentation of shipwrecked seamen's certificates.

4. The construction is reasonable. A contrary construction would leave seamen stranded indefinitely in Alaska and would permit shipwrecked seamen on the Canadian coast, much nearer to the United States than to Alaska, to be returned at the expense of the government because they happened to be wrecked near a "foreign port," while seamen at much greater distance in Alaska could not be transported to the United States.

5. The construction does not enlarge or restrict the scope of the statutes construed, but clearly accomplishes their evident purpose.

There being no other decisions upon the point involved, the matter is submitted upon the foregoing basis.

Respectfully submitted,

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CASSIUS E. GATES,
NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
Proctors for Petitioner.